

of an abatement, the end of the abatement period or the date on which an order is issued terminating the abatement period.

(Approved by the Office of Management and Budget under control number 1225-0013)

[46 FR 63021, Dec. 29, 1981, as amended at 47 FR 14696, Apr. 6, 1982]

Subpart C—Procedures for Considering Applications

§ 16.301 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed with the adjudicative officer and served on all parties to the proceeding in the same manner as other pleadings in the proceeding.

§ 16.302 Answer to application.

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30 day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 16.304.

§ 16.303 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with the agency's standard settlement procedure. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 16.304 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 16.305 Decision.

The adjudicative officer shall issue a recommended decision on the application which shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decisions shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made

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among the agencies, and shall explain the reasons for the allocation made.

§ 16.306 Review by the Secretary.

The Secretary, for purposes of this subsection, means the Secretary of Labor or a person, board or other organizational unit authorized to perform the review function. Either the applicant or agency counsel may seek review of the recommended decision on the fee application, or the Secretary may decide to review the decision on his or her own initiative, in accordance with the Department of Labor's regular review procedures. If neither the applicant nor agency counsel seeks review and the Secretary does not take review on his or her own initiative, the adjudicative officer's decision on the application shall become a final decision of the Department 45 days after it is issued. If review is taken, the Secretary will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

§ 16.307 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 16.308 Payment of award.

An applicant seeking payment of an award shall submit to the Comptroller for the Department of Labor a copy of the final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The request for payment shall be addressed to: Comptroller, U.S. Department of Labor, Frances S. Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210.

PART 17—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF LABOR PROGRAMS AND ACTIVITIES

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AUTHORITY: E.O. 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506).

SOURCE: 48 FR 29258, June 24, 1983, unless otherwise noted.

§ 17.1 What is the purpose of these regulations?

(a) The regulations in this part implement E.O. 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.